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NO. 80-1787

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1980

JOHN L. BREWER and ANITA W. BREWER,
Petitioners,
VS.
MEMPHIS PUBLISHING COMPANY, INC.,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

SUPPLEMENTAL BRIEF FOR PETITIONERS

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SUPPLEMENTAL BRIEF

On April 16, 1981, the Court of Appeals for the Sixth Circuit rendered a decision relevant to Points II and III of the Petition for Certiorari.[1]

In Wilson v. Scripps-Howard Broadcasting Co.,[2] plaintiff Wilson alleged that he had been defamed by a telecast on January 28, 1975, which reported "cow deaths" and "starving cattle" on plaintiff's cattle ranch.

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[1]The caption of Point II is "This Case Presents For Decision The Question Expressly Left Open By Wolston v. Reader's Digest Ass'n, Which Should Be Met Squarely By The Court And Decided" and the caption of Point III is "The Decision Of The Court Below Is In Conflict With The Decisions Of Other Courts Of Appeal, And Of A State Court Of Last Resort".

[2]No. 78-1585-6 (6th Cir., April 16, 1981).

The defendant had reported "that 'because [Wilson] had no money he stopped feeding the cattle' and that 'many [cattle] died and their remains were burned.'"[3]

The initial question addressed by the Court of Appeals was whether or not Wilson was a public figure. In commenting upon plaintiff's earlier activities, the Court of Appeals noted:

> During the late 1950s and 1960s, Wilson acquired a reputation as a successful cattleman. In 1968 he transported a herd of expensive cattle from Colorado to Mississippi and sought and obtained publicity to advertise this event.

Slip Opinion at 2.

In affirming the finding of the District Court that plaintiff was not a public

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[3] Id. at 2.

figure for purposes of the broadcast in question, the Court of Appeals stated:

> The District Court properly concluded that plaintiff was not a public figure. Although plaintiff had seven years earlier acted in a manner that drew media attention to his cattle business, the trial court concluded that "the notoriety is just not that great . . . . Specifically, he did not voluntarily inject himself into this controversey" (emphasis added). The present controversy concerning cattle deaths is different from the earlier isolated efforts of Wilson to promote his cattle business. Moreover, there is no evidence that he knowingly exposed himself to the increased media attention. Nor did plaintiff have access to effective channels of communication. Although he had the opportunity to respond in the news report, he did not have "regular and continuing access to the media."

Slip Opinion at 3-4.

Likewise, in the present case, petitioners did not inject themselves into this controversy. The article regarding the fictional immoral relationship with Elvis Presley in 1972 and the fictional divorce of the petitioners is quite different from the publicity petitioners had received years earlier when Anita Brewer was an entertainer and John Brewer was a football player. Further, in the present case, there was no evidence that either petitioner knowingly exposed himself or herself to the increased media attention for such a fictional event as was reported in 1972. Although the respondent in the case sub judice gave notice to the respondent of

the falsity of the article,[4] there was no showing that either petitioner had "regular and continuing access to the media".

Petitioners submit that this recent Sixth Circuit Opinion is in conflict with the opinion rendered by the Circuit Court of Appeals for the Fifth Circuit in this cause.

Respectfully submitted,

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[4]Under Mississippi law, before a libel action can be brought, plaintiffs are required to give notice to defendant of the statements alleged to be false and defamatory pursuant to §95-1-5, Miss. Code Ann. (1972).

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